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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,122	06/24/2003	Isaac Glndi	4029.006.003	2223

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EXAMINER	
DOAN, ROBYN KIEU	

ART UNIT	PAPER NUMBER
3732	

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/603,122	GLNDI, ISAAC	
	Examiner	Art Unit	
	Robyn Doan	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 August 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Applicant's Amendment filed 08/08/2005 has been entered and carefully considered. Claims 1-15 have been amended. Limitations of amended claims have overcome the 35 U.S.C 101 and 112 rejections, however, the amended claims have not been found to be patentable over prior art of record and newly discovered prior art, therefore, claims 1-24 are rejected under the new ground rejections as set forth below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-2, 4-8, 10-14, 16-22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banschick in view of Fitzgerald et al (6;352,258).

With regard to claims 1-2, 4-8, 10-14, 16-22 and 24, Banschick discloses a cosmetic container (col. 22, lines 1-5) comprising a recess holding cosmetic, a cap (decorative end closure col. 22, line 8) having an entertainment device for entertaining a child (col. 1, lines 40-50 and 64-67), the entertainment device being a part of the cap and comprising colored lights (co. 22, lines 20-25), blinking lights (col. 15, lines 15-17), sound being animal noises, musical tone, verbal message, musical instrument (col. 21,

lines 38-55); also the container being a bottle (col. 23, lines 15-17). Banschick does not disclose the container having at least one die, a flexible sheet and a cover, the die being on the sheet and wherein depressing the cover causes the die to be tossed, also Banschick does not disclose the material of the cap being a faceted plastic and the shape of the container being a musical instrument. Fitzgerald et al discloses a child's feeding bowl (figs. 3-5) comprising a container (20) having a dice agitator (10) being on top of the container. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the die as taught by Fitzgerald et al into the cosmetic container of Banschick for the purpose of entertaining the child, it is also noted that Fitzgerald discussed that the dice agitator is well known in the art (col. 4, lines 55-67), therefore, because dice agitator is an art-recognized device at the time the invention was made, one in an ordinary skill in the art would have found it obvious to use a flexible sheet and a cover for the dice agitator. It would also have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the material of the cap being a faceted plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. And it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the shape of the container being a musical instrument, since such a modification would have involved a mere change in the shape of the component.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Banschick in view of Fitzgerald et al.

With regard to claim 3, Banschick in view of Fitzgerald et al disclose a cosmetic container comprising all the claimed limitations in claim 1 as discussed above except for the entertainment device comprising at least two dice. It would also have been obvious to one having an ordinary skill in the art at the time the invention was made to employ two dice, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Banschick in view of Fitzgerald et al as applied to claim 4 above, and further in view of Farman (4861505).

With regard to claim 15, Banschick in view of Fitzgerald et al disclose a cosmetic container comprising all the claimed limitations in claim 4 as discussed above except for a timer. Farman discloses a cosmetic container (fig. 1) having a timer (63). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the timer as taught by Farman into the cosmetic container of Banschick in view of Fitzgerald et al for the purpose of setting a predetermined time to activate and deactivate the device.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Banschick in view of Fitzgerald et al as applied to claim 5 above, and further in view of Oren et al (6443794).

With regard to claim 23, Banschick in view of Fitzgerald et al disclose a cosmetic container comprising all the claimed limitations in claim 5 as discussed above except for the sound being touch activated. Oren et al discloses a toy (fig. 2) comprising sound being touch activated (col. 3, lines 15-22). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ touch activated mechanism as taught by Oren et al into the entertainment device of Banschick in view of Fitzgerald et al for the intended use purpose.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Banschick in view of Fitzgerald et al as applied to claim 1 above, and further in view of Sheffler et al (6325075).

With regard to claim 9, Banschick in view of Fitzgerald et al disclose a cosmetic container comprising all the claimed limitations in claim 1 as discussed above except for the cosmetic having glitter. Sheffler et al discloses a nail polish bottle (fig. 1) having cosmetic product with glitter. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the glitter as taught by Sheffler et al into the cosmetic container of Banschick in view of Fitzgerald et al for the purpose of providing a desired ornamental effect.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Borri , Lee et al and Gitterman are cited to show the state of the art with respect to a cosmetic container having light, sound effect.

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robyn Doan

John J. Wilson
Primary Examiner